

STATE OF INDIANA

IN THE VANDERBURGH SUPERIOR COURT

COUNTY OF VANDERBURGH

) SS:

VANDERBURGH CIRCUIT COURT

STATE OF INDIANA



FILED

AFFIDAVIT FOR PROBABLE CAUSE

VS

MAY 12 2010

COUNT 1:

ROBERT KYLE BUCHANAN
AKA KYLE BUCHANAN*Robert K. Buchanan*

COMMODITY FRAUD

A CLASS C FELONY

CLERK
AGENCY: VANDERBURGH CO. PROSECUTOR'S
OFFICE

WHITE/M

DOB: 06/03/1956; 06/03/1959; 06/03/1960

I.C. 23-2-6-24 AND I.C. 23-2-6-33

6528 GLADE AVE

CASE #: 10-NONE

APT 5

CINCINNATI, OHIO 45230

COUNT 2:

276 W. CADY DRIVE

SALE OF COMMODITY CONTRACT

APT 912

A CLASS C FELONY

CARMEL, INDIANA 46032

AGENCY: VANDERBURGH CO. PROSECUTOR'S
OFFICE

I.C. 23-2-6-17 AND I.C. 23-2-6-33

CASE #: 10-NONE

COUNT 3:

FAILURE TO REGISTER AS A COMMODITY
MERCHANT

A CLASS C FELONY

AGENCY: VANDERBURGH CO. PROSECUTOR'S
OFFICE

I.C. 23-2-6-23 AND I.C. 23-2-6-33

CASE #: 10-NONE

The undersigned, being first duly sworn upon his oath, deposes and says upon information and belief that **Robert Kyle Buchanan** has committed the offense of **Ct I: Commodity Fraud**, a Class C Felony, and **Ct II: Sale of a Commodity Contract**, a Class C Felony, and **Ct III: Failure to Register as a Commodity Merchant**, a Class C Felony, and in support thereof says as follows:

Your affiant is employed as an Investigator for the Vanderburgh County Prosecutor's Office. Through the course of her employment, your affiant has the opportunity to review

supplemental reports prepared by fellow law enforcement personnel. In this case, your affiant reviewed information prepared by Charles Williams.

Investigator Charles Williams swears that the following information is true and that he has personal knowledge of it, or learned it from another law enforcement officer:

Williams is an investigator employed by the Indiana Secretary of State Todd Rokita, Securities Division, Prosecution Assistance Unit. Through his employment, he became involved in an investigation of the defendant, Robert Kyle Buchanan a/k/a Kyle Buchanan ("Buchanan"), D.O.B. 6/3/1956, 6/3/1959, or 6/3/1960, W/M, SSN XXX-XX-0452, 6528 Glade Ave, Apt 5, Cincinnati, OH 45230, or 276 W Cady Drive, Apt 912, Carmel, IN 46032.

This investigation arose from a complaint by an Indiana citizen that Buchanan had committed violations of the Indiana Commodity Code, found at IC 23-2-6. Williams believes his investigation shows Buchanan committed violations of the Indiana Commodity Code by committing fraud, selling a commodity without the proper registration, and selling a commodity contract. He bases this conclusion upon a review of relevant business and bank records and interviews of witnesses with personal knowledge of the actions detailed herein.

Elaine Brown met Buchanan socially in September of 2009. Buchanan did business as "Buchanan Trading." On December 24, 2009, Elaine B. Brown ("Brown") entered into a "Buchanan Trading Managed Account Agreement" ("the December 24 Agreement"). The December 24 Agreement was given by Brown to Buchanan at Brown's residence in Vanderburgh County, Indiana. Brown entered into the December 24 Agreement with Buchanan for investment purposes. Buchanan promised Brown that he could take \$10,000 and turn it into \$1 million dollars in one (1) years time.

Paragraph 1, on page 1 of the December 24 Agreement states in part:

Client (Brown) will open a commodity trading account (Account) with a futures commission merchant (Broker), which is registered with the Commodity Futures Trading Commission (CFTC) as a futures commission merchant... Client acknowledges that he has informed the Advisor (Buchanan) that \$10,000 has been allocated for trading by the Advisor and is the amount which will represent the initial Account Equity.

Paragraph 2, on page 1 of the December 24 Agreement states in part:

Client appoints the Advisors (and his associates) as his sole attorney-in-fact with respect to the Account to buy, sell or otherwise trade in commodities, commodity futures contracts, financial instruments, options, currencies, precious metals, forwards, derivatives, and all other foreign or domestic interests pursuant to the Advisor's trading system or methodology.

Paragraph 5, on page 2 of the December 24 Agreement indicates that Buchanan was to get a fee of 35% of Brown's account's trading profits. Paragraph 6, on page 2 of the December 24 Agreement indicates that Buchanan would transmit orders to a futures commission merchant,

who is to be registered with the Commodity Futures Trading Commission. Paragraph 7, on page 2 of the December 24 Agreement states in part, "Funds shall be returned to the client within twenty (20) business days from such termination."

In conjunction with the December 24 Agreement, Brown provided Buchanan with a check dated December 24, 2009, for \$10,000 made out to Buchanan Trading ("the Check"). The memo line of the Check states, "Deposit into my trading account." The Check was written on Brown's National City account. The Check was given to Buchanan by Brown at Brown's residence in Vanderburgh County, Indiana. The back of the Check was endorsed by Buchanan.

On December 28, 2009, the Check was deposited into an account belonging to Morgan Buchanan and Shelley Buchanan, account number 400xxxx101, at PNC Bank. Morgan Buchanan is Buchanan's son, and Shelley Buchanan is Buchanan's ex wife. The Check was deposited into this account at PNC Bank without Morgan and Shelley Buchanan's knowledge. Buchanan did not have authorization to use this account at PNC Bank. On December 29, 2009, there was a \$10,000 cash withdrawal from this account at PNC Bank that was not done by Morgan Buchanan or Shelley Buchanan.

On January 16, 2010, Buchanan provided Brown with another "Buchanan Trading Managed Account Agreement" ("The January 16 Agreement"). The January 16 Agreement was given to Brown by Buchanan at Brown's residence in Vanderburgh County, Indiana. The January 16 Agreement was slightly different than the December 24 Agreement. The only difference in the January 16 Agreement is found in paragraph 7, on page 2, which states in part, "Funds shall be returned to the client within sixty (60) business days from such termination." Brown did not sign the January 16 Agreement. Buchanan did sign the January 16 Agreement. Despite demand, Buchanan has not provided Brown with her \$10,000.

The National Futures Association ("the NFA") handles the licensing and registration for the Commodity Futures Trading Commission ("the CFTC"). The CFTC is the federal agency that regulates the commodity markets and industry. According to the NFA, Buchanan and Buchanan Trading applied to become a commodity trading advisor on May 16, 2000. On January 24, 2001, the NFA abandoned Buchanan and Buchanan Trading's application due to deficiencies. As such, Buchanan and Buchanan Trading have never been registered with the NFA and the CFTC. Additionally, Buchanan never disclosed to Brown that he is not registered to sell a commodity contract.

After a duly diligent search, no record of application for licensing and/or registration under the name of Robert Kyle Buchanan or Buchanan Trading in Indiana is found to exist in the records of the Indiana Secretary of State's Office, Securities Division, including a search of the CRD and the IARD, nor is there any evidence that any was ever filed.

Your affiant believes that all of the persons named above speak from personal knowledge and observation and are reliable and credible in that they relayed this information to your affiant during the course of your affiant's duties as a law enforcement officer engaged in the investigation of this offense in an effort to aid in said investigation. Your affiant believes that

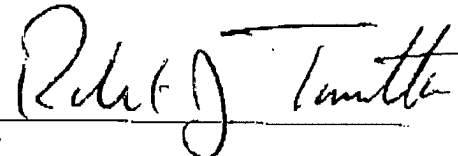
there is a factual basis for the above information in that the information given by each individual is corroborated by that given by the other.

That the above-described events took place in Vanderburgh County, Indiana.


Susie Mattingly, Affiant

Before me, Judge Tornetta, Judge of Vanderburgh County, personally appeared the above-named affiant, and being duly sworn upon his oath swears that the above facts are true and correct to the best of his knowledge.

Dated: May 12, 2010


Judge
8:58 am
Time

ORDER

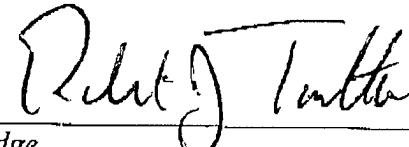
The State of Indiana, by its Prosecuting Attorney, Stanley M. Levco, files an Affidavit for Probable Cause which is examined by the Court. From said examination, the Court finds that probable cause does exist for the arrest of **Robert Kyle Buchanan**, for the crime of **Ct I: Commodity Fraud**, a Class C Felony, and **Ct II: Sale of a Commodity Contract**, a Class C Felony, and **Ct III: Failure to Register as a Commodity Merchant**, a Class C Felony. The Clerk of this Court is ordered to issue a Warrant for the arrest of the suspect, and the Court does hereby order a bond:

(a) ☒ A bond set in the amount of \$ 10,000 CASH/ SURETY.

(b) ☐ No bond until further ordered by the Court.

Dated: May 12, 2010

GJS:gjs


Judge